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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,749	04/14/2005	James Martin	P63564	8352
156 7590 05/21/2008 KIRSCHSTEIN, OTTINGER, ISRAEL & SCHIFFMILLER, P.C. 425 FIFTH AVENUE 5TH FLOOR NEW YORK, NY 10016-2223				
EXAMINER				
WANG, QUAN ZHEN				
ART UNIT		PAPER NUMBER		
2613				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/508,749

Applicant(s)

MARTIN, JAMES

Examiner

QUAN-ZHEN WANG

Art Unit

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date 2/11/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. (U.S. Patent Application Publication US 203/0117678 A1) in view of Smith et al. (U.S. Patent Application Publication US 2003/0020977 A1).

Regarding claim 9, Chang discloses a communications system (fig. 2) comprising:

a communications network (fig. 2, network 200; figs. 3-5) comprising network nodes (fig. 2, nodes 121, 123, 124, 125) and network links between the network nodes (fig. 2, the links between the nodes);

and a network management system (fig. 4, combination of the NC&M 220 and module 410) for allocating connections to the network, the connections utilizing the network nodes and the network links;

in respect of each said connection, there being a number of possible ways to implement the connection in the network (fig. 2, alternative path and alternative wavelength);

the network management system including a network state store which maintains a continuously updated record of current network usage (fig. 2, NC&M 220; paragraph 0119);

the network management system, when allocating the connection to the network, selecting one of the number of possible ways to implement the connection;

the network management system, when deciding whether to accept or reject a request for the connection on the network, having an option to accommodate the request to reconfigure existing connections on the network by selecting, in respect of at least one existing connection reconfigured, a different one of the number of possible ways to implement the connection (see, for example, paragraph 0110);

the reconfiguration by the network management system being constrained to a set of possible reconfigurations which is a subset of the set of all possible reconfigurations of the existing connections on the network (inherent), said subset being defined by those reconfigurations that can be carried out with no interruption (fig. 2, alternate path and alternate wavelength).

Chang differs from the claimed invention in that Chang does not specifically disclose that the network management storing information on network which current connections are reconfigurable and which are not. However, it is well known in the art to include unreconfigurable connections in a network. For example, Smith discloses to include unreconfigurable connections in a network (paragraph 0079, "the first link between node A and the first intermediate node along the path is fixed") and the reconfiguration by the network management system is inherently constrained to

reconfiguration of only the reconfigurable connections (paragraph 0079). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to configure the system of Chang to include connections that are reconfigurable and connections that are not reconfigurable and to store the information in the network management system. One of ordinary skill in the art would have been motivated to do so in order to include pre-provisioned transponders in some of the nodes in the network.

Regarding claims 10 and 16, the modified system of Chang and Smith further includes unreconfigurable connections in a network (Smith: paragraph 0079, "the first link between node A and the first intermediate node along the path is fixed") and the reconfiguration by the network management system is inherently constrained to reconfiguration of only the reconfigurable connections (paragraph 0079).

Regarding claims 11 and 12, Change further discloses that the network management system reconfigures a reconfigurable connection by changing one of a wavelength on which the connection is made (fig. 2, alternative wavelength) and a route taken by the connection (fig. 2, alternative path).

Regarding claim 13, Chang further discloses that the reconfiguration by the network management system is constrained such that each existing connection on the network is reconfigured, but not every time in all ways possible for that connection (paragraph 0110).

Regarding claim 14, regarding claim 14, Chang further discloses that each connection comprises a main and a standby path, and the reconfiguration by the

network management system is constrained in that only the standby path, and not the main path, of the connection is changed (paragraph 0113. Note that the NC&M computes and updating the routing tables based on the network parameters, including the state of communication lines).

Regarding claim 15, Chang further discloses that when first implementing the connection on the network, it is possible to choose both a route the connection will take and a wavelength on which the connection will be made, the reconfiguration by the network management system being constrained in that only one of the route and the wavelength of the connection is changed, not both (fig. 2).

Response to Arguments

3. Regarding claim 9, Applicant argues that the "reference relates to wavelength division multiplexed label switching rather than the reconfiguration of connections using a network management system so that a further connection can be accommodated". However, in accordance with MPEP, "USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003)" (MPEP §2106). For the instant case, the network control and management (NC&M 220) and module 410 of Chang, setting and allocating connections between nodes in the system as shown in fig. 2, clearly reads on the claimed network

management system for allocating connections to the network, the connections utilizing the network nodes and the network links; the alternative path and alternative wavelength of Chang clearly reads on the claimed limitation of "a number of possible ways to implement the connection in the network".

4. Applicant's other arguments filed on 2/11/2008 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lu et al. (U.S. Patent Application Publication US 2002/0191247 A1) disclose a WDM network has a restoration process to re-route wavelengths.

Halgren et al. (U.S. Patent Application Publication US 2004/0052520 A1) disclose a WDM network having path protection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quan-Zhen Wang whose telephone number is (571) 272-3114. The examiner can normally be reached on 9:00 AM - 5:00 PM, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/qzw/
5/14/2008

/Jason Chan/

Supervisory Patent Examiner, Art Unit 2613